Goh Koh Chai v Evelyn Kiew Ai Chin

HIGH COURT (KUCHING) — DIVORCE PETITION NO 33–38 OF 2010-II
SANGAU GUNTING J
19 NOVEMBER 2012

Family Law — Children — Custodianship — Dissolution of marriage — Application by PH for custody, care and control of minor child — Whether application should be allowed — Matrimonial assets — Division of — Whether properties were jointly acquired — Whether RW had indirectly contributed to purchase of properties — Entitlement to monies in various bank accounts — Maintenance — Maintenance of wife — Petitioner's current financial status — Whether respondent entitled to amount in petitioner's EPF

Goh Koh Chai, the petitioner husband ('the PH') had petitioned for a divorce from Evelyn Kiew Ai Chin, the respondent wife ('the RW) of 29 years. It was the RW's insufficiently substantiated allegation that the breakdown of the marriage was wholly due to the petitioner having transmitted to her a type of venereal disease presumably called herpes complex. The PH contended that the cause of breakdown of the marriage was for all practical purposes entirely attributable to the actions, behaviour and attitude of the RW, an allegedly extremely jealous person who constantly accused the PH of having extra-marital affairs. However, in this trial it was the PH's view that the breakdown of the marriage was no longer an issue; the present proceedings were only concerned with the remaining issues such as the issue of the custody, care and control of the minor child, the division of the matrimonial assets of the PH and the maintenance. The RW, who was living in Perth Australia as care taker of the children while they were pursuing an education in Perth, claimed that the PH had uprooted the minor child from Australia and forced him to continue his studies in Kuching. The PH testified that he had regularly visited the family while they were in Perth and provided for the up-keep of the house he had purchased for them in Australia but that the RW had failed to make any indirect contribution in the form of taking care of the family while the children were living with her. As such, the PH contended that the minor child would have a more balanced and happier living environment with him in Kuching rather than in Australia with the RW. This evidence was supported by the minor child, who has since reached 13-years of age, and the testimony and report of the welfare officer. The couple's matrimonial assets consisted of a house in the Kuching Central Land District ('the Hui Sing house'), a property in the Matang Land district, a property in the Gading-Lundu Land District, the house in Perth, Australia, a speedboat and Mercedes Benz in Australia and three other Mercedes Benz cars in Kuching, the monies in various bank

accounts in Australia, the monies in a fixed deposit in the Westpac Bank in Singapore and the PH's EPF. A

Held:

(1) After having considered all the circumstances of this case, the applicable principles of law, the wishes of the minor child and the evidence of the welfare officer, which confirmed the minor child's preference to live with his father, custody, care and control of the minor child was granted to the PH. The RW was given reasonable access to the minor child (see paras 16–17). B C

(2) After taking into consideration the length of the marriage, ie 29 years, and the indirect contributions of the RW, the Hui Sing House ought to be divided in the proportion of 30% to the RW and 70% to the PH. As the RW had neither contributed to the purchase nor to the maintenance and upkeep of the two properties in the Matang Land District and the Gading-Lundu Land District, these two properties ought to be divided in the proportion of 80% to the PH and 20% to the RW. As regards the house located in Australia, the PH gave evidence of having bought it in 2007 with the monies he received from the sale of an apartment he had bought and his other savings. PH also testified that the RW had failed to make indirect contribution in the form of taking care of the family while the children were living with her in Australia. The PH's testimony was corroborated by the testimony of two of their children. Based on the applicable legal principles, the evidence as a whole and the parties' submissions, the PH should be entitled to a three-quarter share in this property while the RW should be entitled to the remaining one-quarter share (see paras 18–25). D E F

(3) As for the speed boat and the cars it was proposed and accordingly agreed that the RW would keep the speed boat and the Mercedes Benz car in Australia, while the PH would keep the other three cars in Kuching, Malaysia (see para 26). G

(4) It would appear substantially unchallenged that the monies in various bank accounts in Australia though in the name of the RW were monies passed to her by the PH for safekeeping and their retirement. In the circumstances, these monies were to be divided in a proportion of 75% to the PH and 25% to the RW, while the monies in a fixed deposit in the Westpac Bank in Singapore were to be transferred to the PH's name and held on trust for the children's school fees and living expenses (see paras 27, 28, 30 & 31). H I

(5) As for the PH's EPF, it would be fair and reasonable for it to be divided in the proportion of 70% to the PH and 30% to the RW (see para 32).

(6) Although the RW had claimed the sum of AUD68,100 as her yearly

maintenance, it would appear fair in the circumstances of this case that she be granted a maintenance in the sum of AUD38,000 or AUD3,166 per month (see para 43).

[Bahasa Malaysia summary

Goh Koh Chai, suami pempetisyen ('SP') telah memfailkan petisyen untuk perceraian daripada Evelyn Kiew Ai Chin, isteri responden ('IR') selama 29 tahun. Adalah dakwaan IR yang tidak dibuktikan secukupnya bahawa perpecahan perkahwinan tersebut adalah akibat SP telah menjangkitkannya dengan sejenis penyakit kelamin yang mungkin dikenali sebagai *herpes complex*. SP menegaskan bahawa punca kegagalan perkahwinan tersebut adalah sepenuhnya atas sebab-sebab praktikal akibat tindakan, tingkah laku dan sikap IR, seorang yang didakwa sebagai kuat cemburu yang sentiasa menuduh SP mempunyai hubungan sulit luar perkahwinan. Walau bagaimanapun, dalam perbicaraan ini, adalah menjadi hujahan SP bahawa perpecahan perkahwinan tersebut bukan lagi suatu isu; prosiding ini hanyalah berkenaan isu-isu seperti isu penjagaan dan kawalan ke atas anak bawah umur, pembahagian aset-aset perkahwinan SP dan nafkah. IR, yang tinggal di Perth Australia merupakan penjaga anak-anak ketika mereka sedang belajar di Perth, mendakwa bahawa SP telah mengambil anak yang bawah umur dari Australia dan memaksanya meneruskan pendidikan di Kuching. SP memberi keterangan bahawa dia kerap mengunjungi keluarga semasa mereka berada di Perth dan telah memperuntukkan penyelenggaraan rumah yang telah dibelinya untuk mereka di Australia tetapi IR telah gagal untuk membuat apa-apa sumbangan tidak langsung dalam bentuk menjaga keluarga semasa anak-anak tinggal bersama-sama dengannya. Oleh itu, SP menghujahkan bahawa anak bawah umur akan mempunyai persekitaran hidup yang lebih seimbang dan menggembirakan dengannya di Kuching dan bukan di Australia bersama-sama dengan IR. Keterangan ini disokong oleh anak bawah umur tersebut, yang telah pun mencapai umur 13 tahun, dan keterangan dan laporan pegawai kebajikan. Aset-aset perkahwinan pasangan tersebut termasuklah sebuah rumah di Tanah Daerah Pusat Kuching ('rumah Hui Sing'), hartanah di tanah daerah Matang, hartanah di tanah daerah Gading-Lundu, rumah di Perth, Australia, bot laju dan Mercedes Benz di Australia dan tiga lagi kereta Mercedes Benz di Kuching, wang dalam pelbagai akaun bank di Australia, wang dalam simpanan tetap di Bank Westpac di Singapura dan KWSP SP.

Diputuskan:

(1) Selepas mempertimbangkan kesemua hal keadaan kes ini, prinsip-prinsip terpakai berkenaan undang-undang, kehendak anak bawah umur dan keterangan pegawai kebajikan yang mengesahkan pilihan anak bawah umur tersebut untuk hidup dengan bapanya, jagaan dan kawalan anak tersebut diberikan kepada SP. IR diberikan akses munasabah ke atas anak bawah umur tersebut (lihat perenggan 16–17).

(2) Selepas mengambil kira tempoh perkahwinan tersebut, iaitu 29 tahun, dan sumbangan tidak langsung daripada IR, rumah Hui Sing haruslah dibahagikan dalam nisbah 30% kepada IR dan 70% kepada SP. Oleh kerana IR telah tidak menyumbang kepada pembelian mahupun penyelenggaraan dan penjagaan kedua-dua hartanah di tanah daerah Matang dan tanah daerah Gading-Lundu, kedua-dua hartanah patut dibahagikan dalam nisbah 80% kepada SP dan 20 % kepada IR. Bagi rumah yang terletak di Australia, SP memberikan keterangan telah membelinya pada tahun 2007 dengan wang yang diterima daripada penjualan apartmennya dan lain-lain simpanan. SP juga memberi keterangan bahawa IR telah gagal untuk membuat sumbangan tidak langsung dalam bentuk menjaga keluarga semasa anak-anak tinggal bersama-sama dengannya di Australia. Keterangan SP disokong oleh keterangan dua orang anak mereka. Berdasarkan prinsip-prinsip undang-undang yang terpakai, keterangan-keterangan secara keseluruhan dan hujahan pihak-pihak, SP semestinya berhak ke atas tiga suku hartanah ini manakala IR sepatutnya berhak kepada baki bahagian iaitu satu perempat (lihat perenggan 18–25).

(3) Bagi bot laju dan kereta-kereta tersebut, telah dicadangkan dan dipersetujui sewajarnya bahawa IR akan menyimpan bot laju dan kereta Mercedes Benz di Australia, manakala SP akan menyimpan tiga lagi kereta di Kuching, Malaysia (lihat perenggan 26).

(4) Akan kelihatan tidak dicabar dengan ketara bahawa wang dalam pelbagai akaun bank di Australia walaupun berada di bawah nama IR adalah wang yang diserahkan kepadanya oleh SP untuk simpanan dan persaraan mereka. Dalam hal keadaan ini, wang-wang tersebut akan dibahagikan dalam nisbah 75% kepada SP dan 25% kepada IR, manakala wang dalam simpanan tetap di Bank Westpac di Singapura akan dipindahkan di bawah nama SP dan dipegang sebagai amanah bagi yuran sekolah anak-anak dan perbelanjaan sara hidup (lihat perenggan 27, 28, 30 & 31).

(5) Bagi KWSP SP, adalah adil dan munasabah sekiranya dibahagikan dalam nisbah 70% kepada SP dan 30% kepada IR (lihat perenggan 32).

(6) Walaupun IR menuntut jumlah sebanyak AUD68,100 sebagai nafkah tahunan, adalah lebih adil dalam hal keadaan kes ini bahawa dia diberikan nafkah berjumlah AUD38,000 atau AUD3,166 sebulan (lihat perenggan 43).]

Notes

For cases on guardianship, see 7(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 3609–3626.

Cases referred to

Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy [2004] 6 MLJ 240, HC (refd)

Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah (Sureshan Marcandan, party cited) [2012] 7 MLJ 315, HC (refd)

Shudesh Kumar a/l Moti Ram v Kamlesh a/p Mangal Sain Kapoor [2005] 5 MLJ 82, HC (refd)

Wong Amy v Chua Seng Chuan (Tow Lee Cheng Christine, Co-respondent) [1992] 2 SLR 360, HC (refd)

Wang Shi Huah Karen v Wong King Cheung Kevin [1992] 2 SLR 1025, HC (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 76(3), (4)(a), (b), 77, 78, 88

Jonathan Chong (TC Chong Advocates) for the husband petitioner.
Ernest Chua (Ernest Chua & Co Advocates) for the wife respondent.

Sangau Gunting J:

INTRODUCTION

[1] In this trial, it would appear that the only remaining main issues concern the custody, care and control of the minor child, the division of matrimonial properties and maintenance. Initially, on 1 March 2012 learned counsel for the wife respondent proposed only three agreed issues for trial: (a) what are the matrimonial properties, and how they should be divided between the husband petitioner and the wife respondent? (b) who should be granted the care, custody and control of Roger Jonathan Goh Fei Yang?, and (c) is the wife respondent entitled to maintenance?. Subsequently, however, in his written submission dated 6 July 2012 the wife respondent's counsel contends the issues to be considered are as follows:

(a) who caused the breakdown of the marriage?

(b) what caused the breakdown of the marriage?

(c) who should be granted the care, custody and control of the minor child, Roger Goh? (irrespective of whatever views that the minor child may have);

(d) what constitutes matrimonial properties?

(e) what are the matrimonial properties or matrimonial assets in this case?

(f) what is the wife respondent's entitlement to the division of matrimonial properties or assets upon dissolution of marriage?

(g) how much is the wife respondent's entitlement to maintenance and lump sum payment upon dissolution of marriage?.

[2] Learned counsel for the husband petitioner contends, the issues for trial are as follows:

(a) what are the properties acquired during their marriage ie matrimonial properties and how are they to be divided amongst them;

(b) who should be given the custody of the minor child Roger Jonathan Goh; and

(c) whether the husband petitioner should be required to pay maintenance to the wife respondent and how much, if any.

THE ARCHITECTURE AND CONTENTS OF EACH PARTY'S SUBMISSION AND WHAT IF ANY MAY THE CONSEQUENTIAL RAMIFICATIONS BE

[3] At the outset it would appear pertinent to note, that for reasons best known to learned counsel for the wife respondent, concerning the main issues, while the submission of learned counsel for the husband petitioner appears quite detailed and comprehensive, the submission of learned counsel for the wife respondent appears rather brief, if not sketchy, lacking in perspective and necessary details. Many relevant issues were not specifically dealt with, seemingly being contented with practically merely and generally urging the court 'to refer to' the witness statement (and supplementary witness statement, bundle of documents and supplementary bundle of documents of (the wife respondent).

[4] Unlike what has been done by the husband petitioner's counsel, in support of most, if not all, of his contentions, it would appear learned counsel for the wife respondent did not specifically refer to and/or quote the relevant portion(s) of the evidence adduced by either or both parties. With respect, the submission seems ambiguous in conveying perspective of the precise nature and extent of the wife respondent's stand and/or viewpoints on the main issues as indicated in her pleadings (amended answer), witness statement, supplementary witness statement and testimony during cross-examination and re-examination.

[5] Such manner of submission invariably would make it difficult for the

opposing side to precisely identify the arguments which the wife respondent wishes to raise, pursue and/or expound, and thereafter to be perused and perhaps answered, in this case, by the husband petitioner. Considered in the context of the submission of counsel for the wife respondent, prepared and formulated in such manner, at the end stage of this trial, this court found it difficult to ascertain the precise nature and extent of what remains of the wife respondent's specific stand on the remaining main and ancillary issues.

[6] It may be further noted, that even at the stage of the proceeding when each party must be taken to have perused each other's earlier written submission, ie during time fixed for clarification of submissions, learned counsel for the wife respondent did not have much else to say and/or add except to say a few words on the custody and maintenance issues. For instance, on some of the main issues there was no response at all to the assertions and/or contentions made by learned counsel for the husband petitioner (see among others paras 8, 12, 14, 16, 18, 20, 24, 27, 31–33, 35, 41, 51–52, 59, 61–62 and 67 of the written submission of counsel for the husband petitioner).

[7] Such assertions and/or contentions on the part of the husband petitioner focus on, inter alia, the wife respondent's having not in cross-examination put up any 'serious challenge' on the relevant evidence adduced by the husband petitioner. In any case, the aforementioned various assertions and/or contentions raised in the husband petitioner's submission ought to have been specifically responded to, had anyone or more of them been seriously challenged by the wife respondent. Having not specifically challenged and / or responded to most, if not all, of the aforesaid assertions and/or contentions among others, a conclusion that the wife respondent must be taken to have substantially acceded to the aforementioned assertions and/or contentions of the husband petitioner would appear justified.

DEGREE OF RESPONSIBILITY ATTRIBUTABLE TO EACH PARTY FOR THE BREAKDOWN OF THE MARRIAGE

[8] It would appear from the petitioner's viewpoint, who or what caused the breakdown of the marriage is a non-issue, or perhaps more accurately, is no longer an issue. It is to be noted, however, that in determining the issue of fair and reasonable maintenance in *Parkunan a/l Achulingam v Kalaiyarasy a/p Periasamy* [2004] 6 MLJ 240, it would appear that the degree of responsibility that is attributable to each party for the breakdown of the marriage was also taken into account. The WR's counsel submits, '… it is entirely due to the Husband Petitioner who caused the breakdown of the marriage and it is entirely due to the Husband Petitioner's transmission of VD (presumably venereal disease) to the Wife Respondent …'

[9] Throughout the trial, whether a decree nisi is to be granted appears to be no longer an issue. As regards the remaining issues as have been indicated by both parties, it would appear convenient to start by considering the issue regarding the degree of responsibility that is attributable to each party for the breakdown of the marriage, even if the relevance of the outcome of such a consideration is limited to certain other remaining issues only, for instance, the maintenance issue.

[10] As implied in the written submission of learned counsel for the husband petitioner, the wife respondent's allegation, that the breakdown of the marriage was wholly due to the husband petitioner's having transmitted to her a type of venereal disease (VD) presumably called herpes complex, does appear substantially unproven. Although it was shown she contracted the VD, on the overall evidence it was not shown to be an irresistible inference that it must have been the HP who transmitted it to her. There are other grounds such as the HP's alleged womanising or womanising tendencies but none of the other grounds was raised in the submission of learned counsel for the wife respondent.

[11] Undisputedly, it is the husband petitioner who initiated the divorce proceeding. The main grounds do seem indicated by the following portions of the husband petitioner's submission: '… the Wife Respondent being a person of extreme jealousy and constantly suspecting the Husband Petitioner of having extra-marital affairs and fathering children with other women … treating him with little consideration for his feeling especially in front of the children such as accusing him of stealing her underwear, looked down on him and his family etc … corroborated by the evidence of their daughter, Rachel Goh in her witness statement … The Husband Petitioner blames the breakdown of their marriage due to the greed and controlling nature of the Wife Respondent. This is well supported the evidence from the husband petitioner and … Rachel Goh …' This submission would appear substantially tenable.

[12] Anyway, as just now indicated, based on her counsel's submission, in wholly blaming the husband petitioner for the breakdown of their marriage, the wife respondent appears to have relied solely on her insufficiently substantiated allegation of the husband petitioner's having transmitted to her a VD. In the circumstances, it would appear tenable the implicit contention on the part of the husband petitioner, that the cause of breakdown of the marriage was for all practical purposes entirely, attributable to the actions, behaviour and/or attitude of the wife respondent.

[13] The phraseology of para 15 of the submission of learned counsel for wife respondent, with respect, makes it difficult to ascertain the purpose of

raising of allegation of the husband petitioner being a violent man under para 16 of the wife respondent's submission. Paragraph 15 seems to contemplate of the marriage breakdown being '*entirely* due to the Husband Petitioner's transmission of VD to the Wife Respondent'. (Emphasis added.) If so, ie that the marriage breakdown was entirely due to the husband petitioner's transmission of VD to the wife respondent, then the purpose of raising the allegation of the husband petitioner being a violent man under the next para 16 vis a vis the primary cause of the marriage breakdown, has become seriously blur.

[14] Anyway, as regards the wider issues of the wife respondent's (a) entitlement or otherwise to maintenance and if entitled, the assessment thereof, (b) child custody and (c) division of matrimonial assets, learned counsel for the wife respondent also refers to the length (he says more than 29 years) of the marriage, and 'the parts played by the wife respondent as a mother and caretaker of the children both in Kuching and Australia as her contribution towards the family …'. The specific issue of whether the wife respondent ought to be given maintenance and if so, how much, would later be reverted to.

CUSTODY OF THE MINOR CHILD

[15] I shall first deal with the issue of custody of the minor child Roger Goh Fei Yang. In urging the court to grant custody to her, learned counsel for the wife respondent contends, inter alia: 'It is not in dispute that it is the intention of both the Husband Petitioner and the Wife Respondent to have their children study in Australia … it would be in the best interest of the child for him to go back to Perth to continue with his studies.' Implicit in the submission appears to be the allegation that the husband petitioner 'uprooted' Roger Goh 'from Australia and forced to study in Kuching'.

[16] In any case, the aforesaid notwithstanding assuming its substantial truth and/or accuracy, based on the overall evidence adduced by both parties, with respect, it does appear tenable the husband petitioner's contention, that 'Roger therefore, is having a more balanced and happier living environment living in Kuching with the Husband Petitioner than in Perth, Australia with the Wife Respondent'. The evidence of Rachel Goh and Roger Goh himself does appear indicative of the wife respondent's claim that 'she is a better parent to Roger' not being shared by her children. Anyway, Roger Goh himself, who has since reached the age of 13 years, has told the court that he prefers to live with the husband petitioner. Then there is the report of the welfare officer, Encik Najib bin Endong and the testimony of Encik Najib bin Endong himself which confirms Roger Goh's having told him of his preference to live with his father.

[17] In the circumstances, having regards to the applicable principles of law

(see particularly s 88 of the Law Reform (Marriage & Divorce) Act 1976), and considering the relevant portions of the over-all evidence adduced by both parties, as well as, both parties' submissions, with respect it is this court's finding that custody, care and control of the minor child Roger Goh Fei Yang ought to be given to the husband petitioner, and that the wife respondent be given reasonable access to the minor child.

DIVISION OF MATRIMONIAL PROPERTIES PROPERTIES IN SARAWAK

[18] As regards the division of matrimonial properties generally, learned counsel for the wife respondent urges the court 'to consider the minimum 1/3 rule … in view of the length of marriage i.e. 29 years and the lengthy contribution of wife respondent … to the family'. Specifically concerning Lot 1548 Block 16 Kuching Central Land District ('Hui Sing House'), and referring to s 76(4)(b) of the Law Reform (Marriage & Divorce) Act 1976, as well as, the cases of *Shireen a/p Chelliah Thiruchelvam v Kanagasingam a/l Kandiah (Sureshan Marcandan, party cited)* [2012] 7 MLJ 315 and *Wong Amy v Chua Seng Chuan* [1992] 2 SLR 360, the husband petitioner contends each of the wife respondent and himself be given 1/4 and 3A share respectively. It may be noted that s 76(4)(a) of the Law Reform (Marriage & Divorce) Act 1976 also contemplates of 'the contributions made by the other party who did not acquire the assets to the welfare of the family by looking after the home or caring the family'. In the circumstances, and keeping in mind also the length of the marriage, it would appear proper that the Hui Sing House be divided in the proportion of 30% to the wife respondent, and 70% to the husband petitioner.

[19] Concerning Lot 140 Block 7 and Lot 532 Matang land District, keeping in mind both s 76(4)(a)–(b) of the Law Reform (Marriage & Divorce) Act 1976, as well as, the unchallenged evidence that the wife respondent, not only did not contribute at all to the purchase of the properties, but also was not involved in any way in the maintenance and upkeep of the said properties, with respect, it would appear tenable the husband petitioner's contention, that the proportion of division between himself and the wife respondent ought to be respectively 80% to 20%. It is accordingly so ordered.

[20] Based on basically similar grounds, it would appear also proper, that Lot 16 (formerly Lot 2174) and Lot 742 Gading-Lundu Land District be divided between the wife respondent and the husband petitioner in the proportion of respectively 20% to 80%.

House in Perth, Australia

[21] As regards the property located at No 6, Leopold Street, Nedland, Perth,

Australia ('Nedland house') the husband petitioner gave evidence of him having bought it in 2007. Towards the purchase price he used the sale price of an apartment bought in 2004 together with his other savings. The husband petitioner further testified unbeknownst to him the wife respondent registered the Nedland house into her name and in the names of two of their children ie the wife respondent holding presumably 1/3 share and each of the two children holding 1/3 share.

[22] The husband petitioner testified he paid wholly for the purchase price of the earlier house bought in 2004, and that the wife respondent did not at all contribute to the purchase price thereof. He further testified neither did the wife respondent make any contribution towards the purchase of the Nedland house, saying: 'In fact while waiting for from the sale of the Mounts Bay Road apartment, I took out a loan of AUD 1 Million to pay for the Leopold St house first. The intention is that when the AUD840,000.00 is received, AUD 355, 239.10 would go to pay the balance for the Leopold St. house and the balance of AUD704.761.00 should be banked in to settle the loan. My wife did not bank in the balance AUD704.761.00 and she pocketed the money.'

[23] Learned counsel for the husband petitioner submits to the effect that there is neither evidence nor even allegation from the wife respondent that she has done any improvement to the Nedland house. The husband petitioner testified to the effect that even the regular up-keeping was done by him when he visited his family in Perth. According to the husband petitioner, the wife respondent also failed in making indirect contribution in the form of taking care of the family when the children were living with her in Perth. It appears to be his evidence that the children, particularly Rachel Goh found it 'stressful to live with their mother …'.

[24] As submitted by the husband petitioner's counsel, the husband petitioner's aforesaid testimony has actually been corroborated by the testimony of Rachel Goh and Roger Goh. The wife respondent's testimony to the contrary along the line of her having been given the responsibilities of taking care of the children and attending to their needs, does appear to have left much to be desired, thereby portraying as tenable the husband petitioner's implied contention when his counsel submitted, 'Being given certain responsibilities as a mother of four children or a housewife is one thing but whether she does them at all or does them well is quite another'.

[25] Learned counsel submits: 'Taking into consideration that the wife respondent to a large extent failed as a wife, mother and a housewife in taking care of the husband petitioner and the family as a whole and the party by whose effort this property is acquired is the husband petitioner solely and should receive a greater proportion as provided by s 76(4) of (the Law Reform

(Marriage and Divorce) Act 1976 and together with other properties that the wife respondent shall receive in the property division (see presumably to the decision of Rubin JC in *Wong Amy v Chua Sing Chuan (Tow Lee Cheng Christine, Co-respondent)* [1992] 2 SLR 360), the husband petitioner submit (sic) 1/4 share to the wife respondent and the remaining 3/4 share to the husband petitioner is fair and reasonable division of this property in Perth, Australia'. With respect, based on the applicable legal principles, the over-all evidence adduced in this trial, as well as, both parties' submissions, this court agrees.

The speed boat and Mercedes Berz in Perth, Australia

[26] It seems that notwithstanding (in any case according to the husband petitioner) the speedboat and Mercedes Benz in Perth, Australia, having been bought with 'family money', the husband petitioner is nevertheless 'willing and proposes to let the Wife Respondent to (sic) keep them for her use and enjoyment in return of (sic) the Wife Respondent allowing the husband petitioner to keep the car KR26, KG26Q and KN26Q in Kuching …'. Nothing on this matter was said by the wife respondent's counsel during the time for clarification of submissions. Anyway, in the circumstances and having regards to the over-all evidence, it does seem fair and reasonable the aforesaid proposition raised by the husband petitioner, and accordingly an order is made in terms thereof.

Monies in various bank accounts

[27] Concerning the various bank accounts that the husband petitioner says he is aware of (fixed deposit in OCBC (RM361,472.70/RM1,137,907.75 — exh HP7, fixed deposit in NAB Bank Australia for A$539,461.83/RM1,837,033.87 — exh HP8, fixed deposit in Commonwealth Bank Australia A$574,488.50/RM1,895,812.05 — exh HP9, fixed deposit in West Pac Bank Australia A$75,627.89/RM249,572.04 — exh HP10 and fixed deposit in Westpac Bank Singapore for A$1,508,075.97/RM5,201,247.32 — exh HP11 (the amount in italics being the reviewed subsequent amount in respect of OCBC — exh HP-19 and the rest of the amounts in italics being the equivalent amount in Ringgit Malaysia at presumably the then prevailing exchange rate at RM3.30 per AUD1)).

[28] It would appear substantially unchallenged the husband petitioner's testimony that though in the name of the wife respondent, the monies in OCBC, NAB Bank Australia, Commonwealth Bank Australia, and in West Pac Bank Australia, 'are monies passed to her by the husband petitioner during their marriage for safekeeping and their retirement …'.

[29] Specifically on the issue of division of the monies in the aforesaid banks, the husband petitioner's counsel submits: 'In view of the above, especially there may be other accounts kept by the Wife Respondent not known to the Husband Petitioner and the Wife Respondent's refusal to disclose them even when ordered to do so by the court (see s 114 of the Evidence Act), the Husband Petitioner submits for bank accounts (in the aforesaid OCBC, NAB Bank Australia, Commonwealth Bank Australia, and in West Pac Bank Australia), 1/4 share to the Wife Respondent and the remaining 3/4 share to the husband petitioner is fair and reasonable division of the money in these accounts. As for the monies kept at the Westpac Bank Singapore account … the husband petitioner proposes that it be set aside for the children's school fees, university tuition fees, living expenses, medical and dental expenses for the minor child Roger and all the children pursuant to s 76(4)(b) of the Law Reform (Marriage & Divorce) Act 1976 as originally intended when the account was first opened.'

[30] According to the husband petitioner albeit already registered in her name 'there is absolutely no evidence from the Wife Respondent … to show that they (presumably all the aforesaid properties) were gifts given to her by the Husband Petitioner. She who alleges bears the burden of proof. This, the Wife Respondent has failed to do'. In any case, it would appear tenable the husband petitioner's counsel contention of the wife respondent's having since abandoned her allegation that the aforesaid properties or her respective share thereof already registered in her name are gifts given to her by the husband petitioner.

[31] Concerning this matter and as to the nature of the husband petitioner's prayers as regards the proportion of the division of the aforesaid monies in the aforesaid OCBC, NAB Bank Australia, Commonwealth Bank Australia and in West Pac Bank Australia accounts, as well as, the husband petitioner's proposal concerning the monies in the Westpac Bank Singapore, there appears to be no challenge from learned counsel for the wife respondent. In the circumstances, it would appear fair and reasonable the proportion of the division of the monies in the aforesaid banks (25% and 75% to the wife respondent and husband petitioner respectively). Similarly fair and reasonable is the husband petitioner's proposal as regards the monies in the Westpac Bank Singapore ie that the monies kept therein 'be set aside for the children's school fees, university tuition fees, living expenses, medical and dental expenses for the minor child Roger and all the children pursuant to s 76(4)(b) of the Law Reform (Marriage and Divorce) Act 1976 as originally intended when the account was first opened'.

EPF claim

[32] Having regards to s 76(3), (4)(a), (b) of the Law Reform (Marriage and

Divorce) Act 1976, to the decisions in the cases of *Shudesh Kumar a/l Moti Ram v Kamlesh a/p Mangal Sain Kapoor* [2005] 5 MLJ 82 and *Shireen a/p Chelliah Theruchelvam v Kanagasingam a/l Kandiah (Sureshan Marcandan, party cited)*, considering the relevant evidence adduced by both parties in this case, including the length of the marriage, it would appear fair and reasonable, that concerning the wife respondent's claim for the husband petitioner's EPF, each of the wife respondent and the husband petitioner be given 30% and 70% share respectively.

Other properties alleged by the wife respondent to be matrimonial properties

[33] The wife respondent also raised various alleged ownership of other properties by the husband petitioner, as follows:

(a) the husband petitioner's having an account with Public Bank Bhd, Kuching;

(b) the husband petitioner keeping various other bank accounts;

(c) the husband petitioner owned 70% of RMG Survey Sdn Bhd and that this company owns two properties, Lot 8646 and 8649 of Section 64 KTLD;

(d) the husband petitioner owns 1/2 share of the property Lot 11841 Block 16 KCLD; and

(e) the husband petitioner owns share.

[34] In respect of the above-mentioned allegations, the husband petitioner raised the following contentions: the account referred to under (a), is not a saving and therefore is not part of the matrimonial property and not subject to division; the wife respondent failed to adduce any evidence supporting her allegation under (b); similarly the wife respondent has failed to adduce any evidence to substantiate the allegation under (c), (d) and (e). Anyway, it seems no specific argument was raised in the submission of learned counsel for the wife respondent, and neither did the wife respondent's counsel say anything in response the various contentions raised by the husband petitioner's counsel relating to the aforesaid allegations of the wife respondent. With respect, in the circumstances, it would appear tenable the husband petitioner's basic contention, implied or otherwise, that the wife respondent has failed to substantiate each of her aforementioned allegations.

Claim for maintenance

[35] Concerning the assessment of maintenance issue, ss 77–78 of the Law Reform (Marriage and Divorce) Act 1976 (particularly s 78) contemplate of, inter alia, '… the means and needs of the parties' and 'the degree of

responsibility which the court apportions to each party for the breakdown of the marriage'. As to the husband petitioner's means, learned counsel for the husband petitioner quotes on p 26 of his submission a portion of the husband petitioner's testimony, presumably to show how limited his means are in view of, inter alia, his then impending retirement, of his business not doing well, and presumably also in view of his expenses and commitments. The husband petitioner contends, inter alia: 'At this stage of my life my expenses is (sic) well more than the income'. It would appear tenable the submission of counsel for the husband petitioner, that the quoted portion of the testimony of the husband petitioner has not been challenged in cross-examination.

[36] It seems to be the basic submission of counsel for the husband petitioner that 'the Wife Respondent has not made out a case deserving spouse maintenance'. More specifically, he submits: 'In fact she is leading a much more luxurious life in Perth, ie living in a semi-detached house in the expensive neighbourhood of Needlands, Perth, Australia, driving a Mercedes-Benz for transport and pursuing her hobby of yachting and owning a speedboat with no responsibility towards the children. With the property given to her in the division of matrimonial properties above, she should have no problem maintaining her lifestyle. On the other hand, the husband petitioner has the full responsibility of taking care of all the four children and the family. The husband petitioner would be the only one to shoulder the education and living expenses of the children. The husband petitioner is now retired and has no income. All he is burdened with now are expenses of considerable amounts of which the children's education alone will run into millions. He gave his expenses and maintaining all the children and their education at RM600,000.00 (Exh. HP15) yearly and such figure is not disputed by the wife respondent in her (cross-examination). With the children's care and education on him, he would have no means and in no position to maintain the wife respondent.

[37] On the needs of the wife respondent, counsel for the husband petitioner submits: 'The Wife Respondent gave her yearly expenses as AUD68,100.00 (para 3, Q8 of WS-Wife Respondent). The List of expenses such as Nedlands council rate, house maintenance, house insurance premium which need not be paid if the suggestion of selling the Nedlands house in Perth as suggested in para 50–51 (of the husband petitioner's witness statement, HPWS1, quoted under para 50 of the husband petitioner's submission) is taken up. The expenses also include luxuries like membership in the Sarawak Club (when she does not even live in Kuching and will have no chance of using the club facilities), entertainment, travelling expenses … The expenses of AUD68,100.00 is therefore a much inflated figure and should be no more than AUD40,000.00. The Wife Respondent produced no documentary proof eg council assessment bills, invoices, utilities bills, insurance statements or

receipts to support her expenses. The husband petitioner submits the suggestion in para 50–51 of HPWS1 is a very practical one to meet her needs. Upon this divorce, with most of the children either almost grown up and attaining adulthood, the Wife Respondent is relieved of the chores of running the household. She should have plenty of time for herself and she should be realistic about her future.'

[38] Learned counsel for the wife respondent appears not to have specifically discussed the aforesaid matters in his submission. Neither did he raised any contention in respect of any of the aforesaid matters during the time reserved for clarification, ie after he had perused the submission of counsel for the husband petitioner. This would appear indicative of the wife respondent having substantially acceded to the various contentions made by the husband petitioner.

[39] Learned counsel for the husband petitioner concludes his submission on 'Degree of responsibility of parties for the breakdown of the marriage' (I have earlier on dealt with this aspect) as follows:

> 62 From the above, it is clear it is the Wife Respondent's constant baseless accusation of her husband of having extra-marital affairs (which the Wife Respondent herself admitted as a main reason of their estrangement, in p4 para 3 of WS-WR) and her suspicions and jealousy that caused their marriage to break down. As submitted, none of the allegations are supported by evidence and are baseless. It is submitted therefore that this marriage broke down primarily due to the attitude and behavior of the Wife Respondent towards the Husband Petitioner and the Wife Respondent should be blamed totally for the breakdown of the marriage. It is submitted therefore no maintenance be awarded to the Wife Respondent. If maintenance is to be awarded the maintenance should be minimal in view of:-
>
> 62.1 The fact that the Husband Petitioner is a retiree and has no income;
>
> 62.2 The Husband Petitioner is living on and supporting all the children's education expenses through his EPF;
>
> 62.3 The Wife Respondent is well supported by the properties given to her under the property settlement above and the income that can be generated therefrom …
>
> 62.4 Upon the divorce, the Wife Respondent has no responsibility towards the children's living and education expenses and with most of the children having grown up should be able to enjoy an even better standard of living than that of before the divorce.

[40] In *Matrimonial Law in Singapore & Malaysia*, at p 12, the learned author Tan Cheng Han said, inter alia, 'Merely because the marriage has come to an end does not mean that a woman's ex-husband no longer has any obligation to maintain her. The ex-wife who has invested many years of her life

in the relationship may still be in need of reasonable maintenance. This is especially so where she has played the role of the homemaker. Having subordinated her chance of an independent career it would be most inequitable if the ex-husband's obligation came to an end at the end of the marriage. It would be inconsistent with the idea that there is an economic dimension to marriage … In *Wong Amy v Chua Seng Chuan* ([1992] 2 SLR 360) it was held that the one third rule in *Wachtel v Wachtel* can be used as a starting point in assessing the amount of maintenance reasonably payable to an ex-wife … It has already been said earlier that the factors which the court is entitled to have regard to in assessing maintenance are essentially the same whether or not there are matrimonial proceedings. One material difference, however, is that during the course of matrimonial proceedings or thereafter, the court must proceed on the basis that the marriage is at an end if the conditions for ending the marriage are present. The family unit will thereafter come to an end. It may therefore be of some relevance what degree of responsibility can be attributed to each party for the breakdown of the marriage … Upon the marriage coming to an end the court may also make orders for the division of matrimonial assets. The court is entitled to take such orders into consideration in assessing the amount of maintenance reasonably payable to the wife (*Wang Shi Huah Karen v Wong King Cheung Kevin* [1992] 2 SLR 1025)'.

[41] This court has made various orders whereby the wife respondent is entitled to a proportion of the values of various properties: (a) Lot 1548 Block 16 Kuching Central Land District, 30% to the wife respondent, and 70% to the husband petitioner; (b) Lot 140 Block 7 and Lot 532 Matang land District, husband petitioner 80% and the wife respondent 20%; (c) Lot 16 (formerly Lot 2174) and Lot 742 Gading-Lundu Land District, the wife respondent 20% and the husband petitioner 80%; (d) No 6, Leopold Street, Needland, Perth, Australia, the husband petitioner 3/4 share, to the wife respondent 1/4; (e) a speedboat and Mercedes Benz in Perth, Australia; (f) concerning all the following (i) fixed deposit in OCBC (RM361, 472.70/RM1,137,907.75 — exh HP7, (ii) fixed deposit in NAB Bank Australia for A$539,461.88/RM1,837,033.87 — exh HP8, (iii) fixed deposit in Commonwealth Bank Australia A$574,488.50/RM1,895,812.05 — exh HP9, (iv) fixed deposit in West Pac Bank Australia A$75,627.89/RM249,572.04 — exh HP10, 25% and 75% to the wife respondent and husband petitioner, respectively; (g) concerning the claim for the husband petitioner's EPF, 30% to the wife respondent and 70% to the husband petitioner.

[42] It would be noted that aforesaid amounts stated to be in the four fixed deposit accounts in OCBC (RM361,472.70/RM1,137,907.75), NAB Bank Australia (A$539,461.88/RM1,837,033.87), Commonwealth Bank Australia (A$574,488.50/RM1,895,812.05) and West Pac Bank Australia

(A$75,627.89/RM249,572.04) come up to approximately RM3,414,095.46. This would mean that an estimated RM853,523.86 would go to the wife respondent and RM2,560,571.59 to the husband petitioner. As regards the claim to EPF, 30% goes to the wife respondent, while 70% goes to the husband petitioner. As at 26 March 2012, the amount in the EPF was stated to be RM1,002,760. Based on this figure, the wife respondent's and husband petitioner's respective share would be approximately RM300,828 and RM701,932. There would, of course, still be the wife respondent's entitlement to a specified percentage of share in each of the other properties earlier mentioned, both in Kuching, Sarawak and in Perth, Australia.

[43] In her witness statement (WS-RW1) the wife respondent says to the effect, that from 2006–2009, the yearly expenses of her four children and herself, inclusive of the children's school fees, was about AUD200,000. That would roughly work out to be about AUD40,000 per person. Concerning her own yearly expenses, the wife respondent gave a figure of about AUD68,100. The husband petitioner contends AUD68,100 is much inflated figure, and that 'the amount should be no more than AUD40,000. Anyway, considering the orders already made relating to the other properties earlier referred to, and considering also the means and needs of the parties, the degree of responsibility of the parties for the breakdown of the marriage, it would appear justified the husband petitioner's contention that should maintenance for the wife respondent be granted, it ought to be minimal. This was not replied to by the wife respondent's counsel and neither party has submitted on what, in the circumstances of this case, amount to 'minimal' maintenance. Taking into account the over-all circumstances, it would appear fair that the wife respondent be granted yearly maintenance in the sum of AUD38,000 or its equivalent in Ringgit Malaysia.

CONCLUSION

[44] For all the aforesaid reasons, this court made the various orders as it did, that is:

(a) that the marriage be dissolved;

(b) custody, care and control of the minor child, Roger Goh Fei Yang be given to the husband petitioner and that the wife respondent be given reasonable access to the minor child;

(c) Lot 1548, Block 16, Kuching Central Land District be divided in a proportion of 30% to the wife respondent and 70% to the husband petitioner;

(d) each of lot 140, Block 7 and Lot 532, Matang Land District be divided in a proportion 80% to the husband petitioner and 20% to the wife respondent;

(e) Block 16, formerly Lot 2174 and Lot 742 Gading-Lundu Land District be divided in a proportion of respectively 20% to the wife respondent and 80% to the husband petitioner;

(f) No 6, Leopold Street, Nedlands, Perth, Australia be divided in a proportion of 1/4 shares to the wife respondent and the remaining 3/4 shares to the husband petitioner;

(g) the speedboat and Mercedes Benz in Perth Australia be given to and kept by the wife respondent and the Mercedes Benz cars in Kuching with registration Nos KR26, KG26Q and KN26Q to be given and kept by the husband petitioner;

(h) the monies in the various banks accounts namely fixed deposit in OCBC RM1,137,907.75, fixed deposit in NAB Bank Australia AUD556,676.93, fixed deposit in Commonwealth Bank Australia AUD574,488.50, fixed deposit in Wespac Bank Australia AUD75,627.29 (RM249,572.04) — be divided in a proportion of 75% to the husband petitioner and 25% to the wife respondent;

(i) the monies in fixed deposit Wespac Bank Singapore for AUD1,508,075.97 (RM5,201,247.32) to be transferred to the husband petitioner's name to be held in trust for the children's school fees, university fees, living expenses, medical and dental expenses for the minor child and the children;

(j) the husband petitioner's employee provident fund (EPF) to be divided 70% to the husband petitioner and 30% to the wife respondent;

(k) the wife respondent be granted maintenance for the sum of AUD38,000 per year or AUD3,166 per month; and

(l) there shall be no order as to costs.

Order accordingly.

Reported by Kohila Nesan